

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PATRICK TOUSSAINT, :
Plaintiff, :
v. : Case No. 3:05-cv-443-KRG-KAP
DAVID GOOD, et al., :
Defendants :
:

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on July 16, 2008, docket no. 66, recommending that the defendants' motion for summary judgment, docket no. 63, be granted.

The parties were notified that pursuant to 28 U.S.C. § 636(b)(1), they had ten days to file written objections to the Report and Recommendation. On July 24, 2008, plaintiff filed a pleading which contained an untimely motion for extension of time to file a response to defendants' motion for summary judgment and a timely motion for extension of time to file objections, docket no. 67. The motion was denied. docket no. 68. Simultaneously, plaintiff filed a notice of appeal from the filing of the Report and Recommendation. docket no. 69. Plaintiff did not file additional objections, although in his motion for extension he argues that the recommendation of summary judgment is contrary to the law of the case.

Plaintiff's notice of appeal effects an improper interlocutory appeal. Although an appeal would ordinarily divest this court of jurisdiction, Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982), an exception exists to this rule when appellant takes an appeal from an order or judgment which is not appealable. Reshard v. Lankenau Hospital, 256 Fed. Appx. 506, 508 (3d Cir.2007), quoting Venen v. Sweet, 758 F.2d 117, 121 (3d Cir.1985).

After de novo review of the record of this matter and the Report and Recommendation, and considering the arguments in plaintiff's motion for extension of time as timely objections, the following order is entered:

AND NOW, this 4th day of August, 2008, it is ORDERED that the defendants' motion for summary judgment, docket no. 63, is granted. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:



KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE

Notice by ECF to counsel of record and by U.S. Mail to:

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